

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

JOHN GILBERT RUSSELL,

CHAPTER 13

Debtor.

CASE NO. 08-31276-KRH

WELLS FARGO BANK, N.A.,

Plaintiff/Movant.

vs.

**JOHN GILBERT RUSSELL
AKA JOHN G RUSSELL
CARL M. BATES, TRUSTEE
and PAMELA K RUSSELL, Co-Debtor,**

Defendants.

**MOTION FOR RELIEF FROM DEBTOR
STAY PURSUANT TO 11 U. S. C. 362 (d) AND
CO-DEBTOR STAY PURSUANT TO 11 U. S. C. 1301 (c) (3)**

NOTICE

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPTCY CASE. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)

**TO: JOHN GILBERT RUSSELL, DEBTOR
CARL M. BATES, ESQUIRE, CHAPTER 13 TRUSTEE**

IF YOU DO NOT WISH THE COURT TO GRANT THE RELIEF SOUGHT IN THE MOTION, OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE MOTION, THEN WITHIN FIFTEEN (15) DAYS FROM THE DATE OF SERVICE OF THIS MOTION, YOU MUST FILE A WRITTEN RESPONSE EXPLAINING YOUR POSITION WITH THE COURT AND SERVE A COPY ON THE MOVANT. UNLESS A WRITTEN RESPONSE IS FILED AND SERVED WITHIN THIS FIFTEEN (15) DAY PERIOD, THE COURT MAY DEEM OPPOSITION WAIVED, TREAT THE MOTION AS CONCEDED, AND ISSUE AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT FURTHER NOTICE OR HEARING.

IF YOU MAIL YOUR RESPONSE TO THE COURT FOR FILING, YOU MUST MAIL IT EARLY ENOUGH SO THE COURT WILL RECEIVE IT ON OR BEFORE THE EXPIRATION OF THE FIFTEEN (15) DAY PERIOD.

TO: PAMELA K RUSSELL

IF YOU DO NOT WISH THE COURT TO GRANT THE RELIEF SOUGHT IN THE MOTION, OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE MOTION, THEN WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THIS MOTION, YOU MUST FILE A WRITTEN RESPONSE EXPLAINING YOUR POSITION WITH THE COURT AND SERVE A COPY ON THE MOVANT. UNLESS A WRITTEN RESPONSE IS FILED AND SERVED WITHIN THIS TWENTY (20) DAY PERIOD, THE COURT MAY DEEM OPPOSITION WAIVED, TREAT THE MOTION AS CONCEDED, AND ISSUE AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT FURTHER NOTICE OR HEARING.

IF YOU MAIL YOUR RESPONSE TO THE COURT FOR FILING, YOU MUST MAIL IT EARLY ENOUGH SO THE COURT WILL RECEIVE IT ON OR BEFORE THE EXPIRATION OF THE TWENTY (20) DAY PERIOD.

ATTEND THE PRELIMINARY HEARING SCHEDULED TO BE HELD ON APRIL 30, 2008 AT 9:30 AM IN THE U. S. BANKRUPTCY COURT, RICHMOND DIVISION, U. S. COURTHOUSE ANNEX, 1100 EAST MAIN STREET, RICHMOND, VIRGINIA 23219 IN ROOM 345.

NOTICE FROM SAMUEL I. WHITE, P.C.

PURSUANT TO THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT, WE ADVISE YOU THAT SAMUEL I. WHITE, P.C., COUNSEL FOR THE PLAINTIFF, IS A DEBT COLLECTOR, ATTEMPTING TO COLLECT THE INDEBTEDNESS REFERRED TO HEREIN, AND ANY INFORMATION WE OBTAIN FROM YOU WILL BE USED FOR THAT PURPOSE.

**MOTION FOR RELIEF FROM DEBTOR
STAY PURSUANT TO 11 U. S. C. 362 (d) AND
CO-DEBTOR STAY PURSUANT TO 11 U. S. C. 1301 (c) (3)**

The Motion of Wells Fargo Bank, N.A., by Counsel, hereby moves the Court for relief from the automatic stay and in support thereof represents unto the Court:

1. This Court has Jurisdiction over this proceeding pursuant to 28 U. S. C. Sections 157 and 1334, 11 U. S. C. 362 (d) and 11 U. S. C. 1301 (c) (3), and that this matter is a core proceeding.
2. The Debtor filed a Petition under Chapter 13 of the Bankruptcy Code on March 19, 2008.
3. The Co-Debtor is jointly and severally liable on the Note herein.
4. The Debtor and the Co-Debtor are the owners of the real property located at 755 Crosshill Road, Columbia, SC 29205, which property is described as:

Part Lot 86, Hampton Terrace, Richlands County, South Carolina

5. Plaintiff is the holder of a certain Deed of Trust Note dated July 3, 2001, which Note is secured by a Deed of Trust of even date therewith and duly recorded.
6. The account is in arrears for 1 monthly post-petition mortgage installments, with the post-petition reinstatement through April, 2008 being \$3,808.61, calculated as follows:

1 monthly payments (04/08)	\$ 1,579.61
Escrow Advance	1,579.00
Bankruptcy fees and costs	<u>650.00</u>
Total	\$ 3,808.61

7. The unpaid principal balance due on said note is \$124,094.58, and the present approximate payoff balance is \$127,075.00.

8. It is the opinion of the Plaintiff that the Debtor is financially unable to maintain said obligation and that Plaintiff will suffer irreparable injury, loss and damage if it is not permitted to foreclose upon its security interest; otherwise Plaintiff is without adequate protection.

9. Debtor Chapter 13 Plan dated and filed March 20, 2008 provides for surrender of the property.

WHEREFORE, Plaintiff prays that it be granted relief from the provisions of the automatic stay with regard to the said real property in order to pursue its rights pursuant to the terms of the Note and Deed of Trust, to include the initiation of foreclosure proceedings, and further requests that the ten (10) day stay be waived incident to any Order entered incident to the Motion for Relief herein.

WELLS FARGO BANK, N.A.

By: **/s/ ERIC DAVID WHITE**

Of Counsel

Samuel I. White, P. C.

Eric David White, Esquire, VSBN 21346

Michael T. Freeman, Esquire, VSBN 65460

D. Carol Sasser, Esquire, VSBN 28422

1804 Staples Mill Road, Suite 200

Richmond, VA 23230

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion was served by regular mail or email this 8th day of April, 2008, on all necessary parties including Carl M. Bates, Esquire, Trustee, P. O. Box 1819, Richmond, VA 23218; Patrick Thomas Keith, Esquire, Counsel for Debtor, P. O. Box 11588, Richmond, VA 23230-1588; John Gilbert Russell, Debtor, 6500 Glyndon Lane, Richmond, VA 23225; and Pamela K Russell, Co-Debtor, 6500 Glyndon Lane, Richmond, VA 23225.

/s/ ERIC DAVID WHITE

Samuel I. White, P. C.